GDT Electrical, Inc. d/b/a Gardner Electrical Corp. *and* International Brotherhood of Electrical Workers, Local No. 80

GDT Electrical, Inc. d/b/a Gardner Electrical Corp. *and* International Brotherhood of Electrical Workers, Local No. 1340. Cases 5–CA–34956 and 5–CA–34957

May 9, 2011

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS BECKER AND PEARCE

The Acting General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon charges and amended charges filed on May 4 and June 29, 2009, respectively, by International Brotherhood of Electrical Workers, Local No. 80 (Local 80), and on May 4 and June 29, 2009, respectively, by International Brotherhood of Electrical Workers, Local No. 1340 (Local 1340) (collectively, the Unions), the General Counsel issued an order consolidating cases, consolidated complaint, and notice of hearing on July 31, 2009, against GDT Electrical, Inc. d/b/a Gardner Electrical Corp., the Respondent, alleging that it has violated Section 8(a)(5), (3), and (1) of the Act. The Respondent failed to file an answer.

On September 10, 2009, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on September 15, 2009, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the consolidated complaint affirmatively stated that unless an answer was received by August 14, 2009, the Board may find, pursuant to a motion for default judgment, that the allegations in the consolidated complaint are true. By letter dated August 3, 2009, the Respondent notified the Region that it had ceased doing business as of June 12, 2009, and that it had no employees or assets.[1] By letter dated August 18, 2009, the Region advised the Respondent that going out of business did not relieve it of the obligation to file an answer, and that unless an answer was received by September 1, 2009, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer or a response to the Notice to Show Cause, we deem the allegations in the complaint to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.[2]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Virginia corporation with an office and place of business in Norfolk, Virginia, has been engaged as an electrical contractor in the building and construction industry doing commercial and industrial construction. During the 12-month period preceding issuance of the consolidated complaint, a representative period, the Respondent, in conducting its business operations described above, purchased and received at its Norfolk facility products, goods, and materials valued in excess of $50,000 directly from points located outside the State of Virginia.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Unions are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

At all material times, the following individuals have held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and/or agents of the Respondent within the meaning of Section 2(13) of the Act:

[1] With this letter, the Respondent submitted copies of certificates of dissolution and termination issued by the Commonwealth of Virginia State Corporation Commission, effective June 12, 2009.

[2] Under Virginia law, dissolution of a corporation does not "[p]revent commencement of a proceeding by or against the corporation in its corporate name[,]" or "[a]bate or suspend a proceeding pending by or against the corporation on the effective date of dissolution[.]" Virginia Code §§ 13.1-745(B)(5) and (B)(6). Moreover, it is well established that a respondent's asserted cessation of operations does not excuse it from filing an answer to a complaint. See, e.g., *OK Toilet & Towel Supply, Inc.*, 339 NLRB 1100, 1100–1101 (2003); *Dong-A Daily North America*, 332 NLRB 15, 15–16 (2000).

George Gardner — Supervisor
Raymond Gregg Teller — President

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All journeyman wiremen, regular foremen, general foremen, cable splicers, and apprentices employed by Respondent at its Norfolk, Virginia facility; but excluding all office clerical employees, sales employees, professional employees, guards, and supervisors as defined in the Act.

At all material times, the Atlantic Coast Chapter of the National Electrical Contractors Association (ACC NECA) has been an organization composed of various employers engaged in the construction industry, and exists for the purpose, inter alia, of representing its employer-members in negotiating and administering collective-bargaining agreements.

On about March 1, 2006, Local 80 entered into a collective-bargaining agreement with ACC NECA, which was effective by its terms from March 1, 2004, to February 28, 2007. On about February 19, 2009, Local 80 entered into a subsequent collective-bargaining agreement with ACC NECA, which was effective by its terms from March 1, 2007, to February 28, 2010 (Local 80 agreement).[3]

On about October 25, 2006, the Respondent entered into a letter of assent with Local 80, whereby it agreed to comply with, and be bound by, all of the provisions contained in the current and subsequent approved collective-bargaining agreements between Local 80 and ACC NECA, and agreed to be bound by such future agreements unless written notice to terminate was given at least 150 days prior to the then-current anniversary date of the applicable approved labor agreement.

On about December 1, 2005, Local 1340 entered into a collective-bargaining agreement with ACC NECA, which was effective by its terms from December 1, 2005, to November 30, 2008. On about January 13, 2009, Local 1340 entered into a subsequent collective-bargaining agreement with ACC NECA, which is effective by its terms from December 1, 2008, to November 30, 2011 (the Local 1340 agreement).[4]

About April 15, 2008, the Respondent entered into a letter of assent with Local 1340, whereby it agreed to comply with, and be bound by, all of the provisions contained in the current and subsequent approved collective-bargaining agreement between Local 1340 and ACC NECA, and agreed to be bound to such future agreements unless written notice to terminate was given at least 150 days prior to the then-current anniversary date of the applicable approved labor agreement.

By the conduct described above, the Respondent, an employer engaged in the building and construction industry, granted recognition to Local 80 and to Local 1340 as the limited exclusive collective-bargaining representatives of the unit without regard to whether the majority status of the Unions had ever been established under the provisions of Section 9(a) of the Act.[5] For the period from October 25, 2006, to February 28, 2010, based on Section 9(a) of the Act, Local 80 has been the limited exclusive collective-bargaining representative of the unit when employees in the unit performed work within Local 80's jurisdiction, as described in footnote 3, supra. For the period from April 15, 2008, to November 30, 2011, based on Section 9(a) of the Act, Local 1340 has been the limited exclusive collective-bargaining representative of the unit when employees in the unit perform work within Local 1340's jurisdiction, as described in footnote 4, supra.

B. Conduct

1. On about December 15, 2008, the Respondent, by Raymond Gregg Teller, at a jobsite in Norfolk, Virginia, notified employees that the Respondent was dropping out of the Union and threatened employees with layoff if they remained members of the Union.

2. On about January 15, 2009, the Respondent discharged employee Michael Rodney Cartwright because Cartwright was a member of Local 80 and engaged in

[3] The collective-bargaining agreements between Local 80 and ACC NECA described above cover employees in the unit performing work within Local 80's jurisdiction, which includes: the cities of Norfolk, Portsmouth, Virginia Beach, Chesapeake, and Suffolk in Virginia; the counties of Brunswick, Greensville, Lunenburg, Mecklenburg, Southampton, Accomac, and Northampton in Virginia; and the counties of Gates, Pasquotank, Camden, Currituck, Perquimans, Chowan, Washington, Tyrrell, and Dare in North Carolina.

[4] The collective-bargaining agreements between Local 1340 and ACC NECA described above cover employees in the unit performing work within Local 1340's jurisdiction, which includes: from 7812 Warwick Boulevard, Newport News, Virginia, to North of Route 460 and South of the Piankatank River; the boundaries of Newport News and York County, including Fort Eustis, Naval Mine Depot, Naval Mine Warfare School, BP/Amoco Oil Refinery, VEPCO Yorktown Generating Station, Cheatham Annex, Camp Peary; Gloucester County; and beyond North of Route 460 and South of the Piankatank River.

[5] Accordingly, we find that these relationships were entered into pursuant to Sec. 8(f) of the Act and that the Unions are therefore the limited 9(a) representatives of the unit employees for the periods covered by the contracts. See, e.g., *A.S.B. Cloture, Ltd.*, 313 NLRB 1012 fn. 2 (1994), citing *Electri-Tech, Inc.*, 306 NLRB 707 fn. 2 (1992), and *John Deklewa & Sons*, 282 NLRB 1375 (1987), enfd. sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988).

concerted activities, and to discourage employees from engaging in these activities.

3. Since about March 12, 2009, Local 80, by letter, has requested that the Respondent furnish it with the following information: the names and addresses of each employee who performed work for the Respondent from October 1, 2008 to the present, together with each employee's job classification and wage rate. The information requested by Local 80 is necessary for, and relevant to, Local 80's performance of its duties as the limited exclusive collective-bargaining representative of the unit. Since about March 22, 2009, the Respondent has failed and refused to furnish Local 80 with the requested information.

4. Since about November 5, 2008, the Respondent has failed to continue in effect all the terms and conditions of its collective-bargaining agreement with Local 80, including by ceasing to make contributions to the health and welfare fund and the local pension fund. The Respondent engaged in the conduct without the consent of Local 80.

5. On about January 15, 2009, the Respondent, by letter, withdrew recognition from Local 80 as the limited exclusive collective-bargaining representative of employees in the unit performing work within the jurisdiction of Local 80, as described in footnote 3, supra.

By the conduct described in paragraphs 4 and 5, the Respondent has repudiated the collective-bargaining agreement with Local 80 described above. By the conduct described in paragraph 5, the Respondent has withdrawn recognition from Local 80 as the limited exclusive collective-bargaining representative of the employees in the unit performing work within Local 80's jurisdiction, as described in footnote 3, supra.

6. Since about November 5, 2008, the Respondent has failed to continue in effect all the terms and conditions of its collective-bargaining agreement with Local 1340, including by ceasing to make contributions to the health and welfare fund and the local pension fund. The Respondent engaged in this conduct without the consent of Local 1340.

7. On about January 15, 2009, the Respondent, by letter, withdrew recognition from Local 1340 as the limited exclusive collective-bargaining representative of employees in the unit performing work within Local 1340's jurisdiction, as described in footnote 4, supra.

By the conduct described in paragraphs 6 and 7, the Respondent has repudiated the collective-bargaining agreement with Local 1340 described above. By the conduct described in paragraph 7, the Respondent has withdrawn recognition from Local 1340 as the limited exclusive collective-bargaining representative of employees in the unit performing work within Local 1340's jurisdiction, as described in footnote 4, supra.

CONCLUSIONS OF LAW

1. By the conduct described above in paragraph 1, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

2. By the conduct described above in paragraph 2, the Respondent has been discriminating in regard to the hire, tenure, or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(3) and (1) of the Act.

3. By the conduct described above in paragraphs 3–7, the Respondent has been failing and refusing to bargain collectively and in good faith with the limited exclusive collective-bargaining representatives of its employees within the meaning of Section 8(d) of the Act, in violation of Section 8(a)(5) and (1) of the Act.

4. The unfair labor practices of the Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist from those practices and to take certain affirmative action designed to effectuate the policies of the Act.[6] Specifically, having found that the Respondent violated Section 8(a)(3) and (1) by discharging Michael Rodney Cartwright, we shall order the Respondent to offer him full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent job, without prejudice to his seniority or any other rights or privileges previously enjoyed. Further, the Respondent shall make Cartwright whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), plus daily compound interest as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010). The Respondent shall also be required to expunge from its files any and all references to the unlawful discharge of Michael Rodney Cartwright and to notify him in writing that this has been done and that the

[6] The Respondent's Aug. 3, 2009 letter to the Region contends that the Respondent has ceased operations. The effect of the alleged cessation of operation on the remedy is a matter best left to the compliance stage of this proceeding. *Allen Storage & Moving Co.*, 342 NLRB 501 fn. 1 (2004).

unlawful discharge will not be used against him in any way.

Having further found that the Respondent violated Section 8(a)(5) and (1) by withdrawing recognition from Local 80 and failing, from about November 5, 2008, to continue in effect all the terms and conditions of the Local 80 agreement, we shall order the Respondent to recognize Local 80 as the limited exclusive bargaining representative employees in the unit performing work within Local 80's jurisdiction and to apply all the terms and conditions of the Local 80 agreement, and any automatic extensions thereof. We shall also order the Respondent to make whole unit employees for any loss of earnings and other benefits they may have suffered as a result of the Respondent's failure to continue in effect all of the terms and conditions of the Local 80 agreement, in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded* and *Kentucky River Medical Center*, supra.

Having found that the Respondent violated Section 8(a)(5) and (1) by withdrawing recognition from Local 1340 and failing, from about November 5, 2008, to continue in effect all the terms and conditions of the Local 1340 agreement, we shall order the Respondent to recognize Local 1340 as the limited exclusive bargaining representative of employees in the unit performing work within Local 1340's jurisdiction and to apply all the terms and conditions of the Local 1340 agreement, and any automatic extensions thereof. We shall also order the Respondent to make whole unit employees for any loss of earnings and other benefits they may have suffered as a result of the Respondent's failure to continue in effect all of the terms and conditions of the Local 1340 agreement, in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded* and *Kentucky River Medical Center*, supra.

In addition, we shall order the Respondent to make all contractually-required contributions to the Unions' health and welfare funds and local pension funds that have not been made, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). Further, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make any required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded* and *Kentucky River Medical Center*, supra.[7]

Finally, having found that the Respondent violated Section 8(a)(5) and (1) by failing to provide Local 80 with necessary and relevant information, we shall order the Respondent to furnish Local 80 with the information requested in Local 80's letter of March 12, 2009.

ORDER

The National Labor Relations Board orders that the Respondent, GDT Electrical, Inc. d/b/a Gardner Electrical Corp., Norfolk, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees by notifying them that the Respondent is dropping out of the Union.

(b) Threatening employees with layoff if they remain members of the Union.

(c) Discharging employees because they form, join, or assist International Brotherhood of Electrical Workers, Local No. 80 (Local 80), or any other labor organization, or engage in concerted activities, or to discourage employees from engaging in these activities.

(d) Failing and refusing to recognize and bargain with Local 80 as the limited exclusive bargaining representative employees in the unit performing work within Local 80's jurisdiction during the term of the Local 80 agreement and any automatic extensions thereof, and with International Brotherhood of Electrical Workers, Local No. 1340 (Local 1340), as the limited exclusive bargaining representative employees in the unit performing work within Local 1340's jurisdiction during the term of the Local 1340 agreement and any automatic extensions thereof. The unit is:

> All journeyman wiremen, regular foremen, general foremen, cable splicers, and apprentices employed by Respondent at its Norfolk, Virginia facility; but excluding all office clerical employees, sales employees, professional employees, guards, and supervisors as defined in the Act.

(e) Repudiating and failing and refusing to continue in effect all the terms and conditions of its collective-bargaining agreements with Local 80 and Local 1340, including by failing, since about November 5, 2008, to make payments to the health and welfare funds and the local pension funds.

[7] To the extent an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes to the fund.

(f) Failing and refusing to furnish Local 80 with requested information that is necessary and relevant to the performance of its duties as the limited exclusive bargaining representative employees in the unit performing work within Local 80's jurisdiction.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Michael Rodney Cartwright reinstatement to his former position or, if such position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Michael Rodney Cartwright whole for any loss of earnings and other benefits suffered as a result of his unlawful discharge, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files all references to the unlawful discharge of Michael Rodney Cartwright, and within 3 days thereafter, notify him in writing that this has been done and that the unlawful discharge will not be used against him in any way.

(d) Recognize and bargain in good faith with Local 80 as the limited exclusive bargaining representative employees in the unit performing work within Local 80's jurisdiction and Local 1340 as the limited exclusive bargaining representative employees in the unit performing work within Local 1340's 80's jurisdiction, and honor and comply with the terms of the Local 80 agreement and the Local 1340 agreement, and any automatic extensions thereof.

(e) Make whole unit employees for any loss of earnings or other benefits they may have suffered as a result of its failure, since about November 5, 2008, to comply with the provisions of its collective-bargaining agreements, with interest, as set forth in the remedy section of this decision.

(f) Make all health and welfare fund and local pension fund contributions that have not been made since about November 5, 2008, and reimburse unit employees for any expenses ensuing from its failure to make the required payments, in the manner set forth in the remedy section of this decision.

(g) Furnish Local 80 with the information requested in its letter of March 12, 2009.

(h) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(i) Within 14 days after service by the Region, post at its facility in Norfolk, Virginia, copies of the attached notice marked "Appendix."[8] Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In addition to posting paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Finally, since Respondent, during the pendency of these proceedings, appears to have gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 5, 2008.

(j) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 9, 2011

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Wilma B. Liebman, Chairman

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Craig Becker, Member

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Mark Gaston Pearce, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[8] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted and Mailed by Order of the National Labor Relations Board" shall read "Posted and Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED AND MAILED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post, mail, and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT notify employees that we are dropping out of the Union.

WE WILL NOT threaten employees with layoff if they remain members of the Union.

WE WILL NOT discharge employees because they form, join, or assist International Brotherhood of Electrical Workers, Local No. 80 (Local 80) or any other labor organization, or engage in concerted activities, or to discourage employees from engaging in these activities.

WE WILL NOT fail or refuse to recognize and bargain in good faith with Local 80 and with International Brotherhood of Electrical Workers, Local No. 1340 (Local 1340) (collectively, the Unions), by repudiating our collective-bargaining agreements with them and by withdrawing recognition from them as the limited exclusive collective-bargaining representatives of the unit. The unit is:

> All journeyman wiremen, regular foremen, general foremen, cable splicers, and apprentices employed by us at our Norfolk, Virginia facility; but excluding all office clerical employees, sales employees, professional employees, guards, and supervisors as defined in the Act.

WE WILL NOT fail or refuse to continue in effect all the terms and conditions of the collective-bargaining agreement with Local 80 and the collective-bargaining agreement with Local 1340, including by failing to make contributions to the Unions' health and welfare funds and local pension funds on behalf of our unit employees.

WE WILL NOT fail to furnish Local 80 with requested information that is necessary and relevant to its role as the limited exclusive collective-bargaining representative of our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Michael Rodney Cartwright full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed.

WE WILL make Michael Rodney Cartwright whole for any loss of earnings and other benefits suffered as a result of our unlawful conduct, with interest.

WE WILL, within 14 days from the date of this Order, remove from our files all references to the unlawful discharge of Michael Rodney Cartwright, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the unlawful discharge will not be used against him in any way.

WE WILL recognize and bargain with the Unions as the limited collective-bargaining representatives of our unit employees, and comply with the terms of our collective-bargaining agreements with the Unions.

WE WILL make whole unit employees for any loss of earnings or other benefits they may have suffered as a result of our failure, since about November 5, 2008, to continue in effect all the provisions of our collective-bargaining agreements with the Unions, with interest.

WE WILL continue in effect all the terms and conditions of our collective-bargaining agreements with the Unions, including by making contributions to the health and welfare and the local pension funds that have not been made since November 5, 2008, and WE WILL reimburse unit employees for any expenses ensuing from our failure to make these required payments.

WE WILL furnish Local 80 with the information it requested in its letter of March 12, 2009.

GDT ELECTRICAL, INC. D/B/A GARDNER ELECTRICAL CORP.